

TITLE 16. BOARD FOR PROFESSIONAL ENGINEERS, LAND SURVEYORS, AND GEOLOGISTS

NOTICE IS HEREBY GIVEN that the Board for Professional Engineers, Land Surveyors, and Geologists (Board) is proposing to take the action described in the Informative Digest. The Board does not intend to hold a hearing in this matter. If an interested party wishes that a hearing be held, he or she must make the request in writing to the Board no later than 5 p.m. on November 26, 2012. The Board, upon its own motion or at the instance of any interested party, may thereafter adopt the proposals substantially as described below or may modify such proposals if such modifications are sufficiently related to the original text. With the exception of technical or grammatical changes, the full text of any modified proposal will be available for 15 days prior to its adoption from the person designated in the Notice as the contact person and will be mailed to those persons who submit written or oral testimony related to this proposal or who have requested notification of any changes to the proposal.

Written comments, including those sent by mail, facsimile, or email to the address listed above must be received by the Board at its office no later than 5:00 p.m. on December 11, 2012, or must be received by the Board immediately following the hearing. The Board, upon its own motion or at the instance of any interested party, may thereafter adopt the proposal substantially as described below or may modify such proposal if such modification is sufficiently related to the original text.

With the exception of technical or grammatical changes, the full text of any modified proposal will be available for 15 days prior to its adoption from the person designated in this Notice as Contact Person and will be mailed to those persons who submit written testimony related to this proposal or who have requested notification of any changes to the proposal.

Authority and Reference: Pursuant to the authority vested by Sections 144, 475, 6716, 7818, and 8720.5 of the Business and Professions Code, and to implement, interpret, or make specific Sections commencing with Section 475 of B&P or Sections 6751, 6762.5, 6793.3, 7841, 7841.1, 7884, 8747.5, or 8803 of said code, the Board is considering changes to Division 5 and Division 29 of Title 16 of the California Code of Regulations (CCR) as follows:

INFORMATIVE DIGEST

A. Informative Digest

Business and Professions Code (B&P) sections (§§) 6716, 7818, and 8720.5 authorizes the Board to adopt, amend, or repeal, such rules regulations as may be reasonably necessary to enable it to carry into effect the provisions of law relating to the practice of engineering, land surveying, and geology. The Board is proposing the following:

The main purpose of the proposed language is to establish requirements that an applicant must furnish a full set of fingerprints to the Department of Justice ("DOJ") as a

condition of processing and application with the Board. Generally, this proposal would:

- Clarify Board authority to obtain and review criminal offender record information.
- Specify the conditions and the purpose for which a full set of fingerprints would be required.
- Establish that the applicant would be responsible for paying the costs associated with furnishing fingerprints and conducting criminal offender record searches.
- Mandate that failure to comply with these requirements or submission of a full set of fingerprints to DOJ renders any application for approval incomplete and shall not be processed by the Board.
- Waive requirement if fingerprints have already been submitted to DOJ.
- Maintain results of any criminal offender record shall not be released.
- Specify operative dates for any all applicants to submit fingerprints.

Proposed changes, by section, are more specifically identified as follows:

Engineers & Land Surveyors

Add Section 420.1 Applicant Fingerprint Submittal and Review

The sections that follow relate to fingerprinting and disclosure requirements for the processing of an application. The Board is specifying its authority to obtain and review criminal offender record information. This information shall be obtained as a result of fingerprinting and is necessary to determine whether the applicant is subject to denial of licensure pursuant to the Board's authority (commencing with Section 475 of B&P). Applicants need to be made aware that fingerprinting will be required as a condition of licensure, and this regulation would authorize the Board to require fingerprinting.

- Add CCR § 420.1(a) specifies Board authority to obtain criminal record information for the purposes of determining licensure.
- Add CCR § 420.1(b) creates fingerprint requirements for the applicant, in specific, submission of fingerprints to DOJ on behalf of the Board.
- Add CCR § 420.1(c) establishes that the cost of fingerprinting and conducting the criminal history record check must be paid by the applicant. This regulation is necessary to authorize assessment of costs to the applicant.
- Add CCR § 420.1(d) identifies that the applicant shall certify his or her fingerprints have been provided to DOJ for compliance.
- Add CCR § 420.1(e) details compliance requirements for application approval.
- Add CCR § 420.1(f) waives fingerprint requirement if fingerprints have already been submitted with a prior application.
- Add CCR § 420.1(g) authorizes confidentiality of criminal offender records unless requested in accordance with state and federal requirements.
- Add CCR § 420.1(h) identifies additional sections of B&P Code pertaining to application submittal.
- Add CCR § 420.1 (i) defines terminology and provides description of terms.

- Add CCR § 420.1 (j) identifies operative dates for any and all applicants submitting fingerprints.

Geologists and Geophysicists

Add Section 3021.1 Applicant Fingerprint Submittal and Review

The sections that follow relate to fingerprinting and disclosure requirements for the processing of an application. The Board is specifying its authority to obtain and review criminal offender record information. This information shall be obtained as a result of fingerprinting and is necessary to determine whether the applicant is subject to denial of licensure pursuant to the Board's authority (commencing with Section 475 of B&P). Applicants need to be made aware that fingerprinting will be required as a condition of licensure, and this regulation would authorize the Board to require fingerprinting.

- Add CCR § 3021.1(a) specifies Board authority to obtain criminal record information for the purposes of determining licensure.
- Add CCR § 3021.1(b) creates fingerprint requirements for the applicant, in specific, submission of fingerprints to DOJ on behalf of the Board.
- Add CCR § 3021.1(c) establishes that the cost of fingerprinting and conducting the criminal history record check must be paid by the applicant. This regulation is necessary to authorize assessment of costs to the applicant.
- Add CCR § 3021.1(d) identifies that the applicant shall certify his or her fingerprints have been provided to DOJ for compliance.
- Add CCR § 3021.1(e) details compliance requirements for application approval.
- Add CCR § 3021.1(f) waives fingerprint requirement if fingerprints have already been submitted with a prior application.
- Add CCR § 3021.1(g) authorizes confidentiality of criminal offender records unless requested in accordance with state and federal requirements.
- Add CCR § 3021.1(h) identifies additional sections of B&P Code pertaining to application submittal.
- Add CCR § 3021.1(i) defines terminology and provides description of terms.
- Add CCR § 3021.1 (j) identifies operative dates for any and all applicants submitting fingerprints.

B. Policy Statement Overview/Anticipated Benefits of Proposal

The purpose and benefit is to make it easier for the Board to license appropriate candidates while denying those applicants who may jeopardize public safety. The additions will maintain the Board's mission to safeguard the life, health, property, and welfare of the public.

C. Consistency and Compatibility with Existing State Regulations

 X This Board has evaluated this regulatory proposal and it is not inconsistent nor incompatible with existing state regulations.

FISCAL IMPACT ESTIMATES

Fiscal Impact on Public Agencies Including Costs or Savings to State Agencies or Costs/Savings in Federal Funding to the State: The Board sought and were approved a Budget Change Proposal (BCP 1110-01L) to manage the additional workload from processing fingerprint records and the applicable disciplinary actions that may result from fingerprint reports. The BCP provides 1.0 Office Technician and redirected appropriated savings to accomplish fingerprint processing.

Nondiscretionary Costs/Savings to Local Agencies: None.

Local Mandate: The proposed regulatory action does not impose a mandate on local agencies or school districts.

Cost to Any Local Agency or School District for Which Government Code Sections 17500 - 17630 Require Reimbursement: None.

Business Impact:

☒ The Board has made an initial determination that the proposed regulatory action would have no significant statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states.

AND

☐ The following studies/relevant data were relied upon in making the above determination:

The proposed regulatory action will not have a significant statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states. There are approximately 750 vendors statewide, including small businesses that provide fingerprinting services. There will be no initial or ongoing cost impact upon vendors because they are already equipped to provide the fingerprinting service. There are approximately 18,000 applications for licensure processed annually by the Board. A recent change in the application process for Engineer-In-Training (EIT) and Land-Surveyor-In-Training (LSIT) requires an examinee to take an exam for licensure and once passed the examinee can submit an application for licensure. Based on passing rates for those exams, about 50%, only those individuals will submit an application for certification. This will decrease the amount of applications processed annually. EIT's and LSIT's make up 45% (8,100) of Board applications. The Board projects 4,000 applications annually from this new process decreasing total applications to 14,000 annually.

☒ The Board has considered proposed alternatives that would lessen any adverse economic impact on business and invites you to submit such proposals. Submissions may include the following

considerations:

- Continue to accept applications without requesting fingerprints for a criminal history background check. This goes against the Board's mission to safeguard the life, health, property, and welfare of the public.
- Require fingerprints without regulatory authority. The Board cannot operate without regulatory authority and SB 543 requires the Board to verify applicants' fingerprints for criminal history prior to approval.
- The use of performance standards rather than prescriptive standards. This is the standard practice currently administered by the Board. Over time, the Board and the Department has witnessed an increase in the number of enforcement cases as a result of prior criminal history within the licensing population. In order to mitigate further growth fingerprinting provides early detection and immediate action, if required. This will safeguard California consumers.

The rulemaking file includes the facts, evidence, documents, testimony, and/or other evidence which supports this determination.

Cost Impact on Representative Private Person or Business:

☒ The cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action and that are known to Board are:

Applicants, who have not previously been fingerprinted, will be required to be fingerprinted at the time of application review. The one-time cost for a person to get fingerprinted is approximately \$64.00. Of this fee, \$32.00 goes to the DOJ for conducting the background check and providing the criminal record report to the Board, \$17.00 goes to the FBI, and the remainder is for the vendor for fingerprinting the individual. Vendor's fee ranges from \$5.00 to \$45.00 with the average fee being \$15.00.

Effect on Housing Costs: None

EFFECT ON SMALL BUSINESS

The Board has determined that the proposed regulations would not affect small businesses. The regulation will not have a significant adverse economic impact on businesses. There are approximately 750 vendors statewide, including small businesses that provide fingerprinting services. There should not be any cost impact on vendors because they are already equipped to provide the service. This regulation will generate revenue for the vendors of Live Scan.

RESULTS OF ECONOMIC IMPACT ASSESSMENT/ANALYSIS:

Impact on Jobs/Businesses:

The Board has determined that this regulatory proposal will not have

___X___ a significant

impact on the creation of jobs or new businesses or the elimination of jobs or existing businesses or the expansion of businesses in the State of California.

in California:

Benefits of Regulation:

The Board has determined that this regulatory proposal will have the following benefits to health and welfare of California residents, worker safety, and state's environment:

The purpose and benefit is to make it easier for the Board to license appropriate candidates while denying those applicants who may jeopardize public safety. The additional regulations will maintain the Board's mission to safeguard the life, health, property, and welfare of the public.

CONSIDERATION OF ALTERNATIVES

The Board must determine that no reasonable alternative it considered to the regulation or that has otherwise been identified and brought to its attention would be more effective in carrying out the purpose for which the action is proposed, would be as effective and less burdensome to affected private persons than the proposal described in this Notice, or would be more cost-effective to affected private persons and equally effective in implementing the statutory policy or other provision of law.

Any interested person may present statements or arguments orally or in writing relevant to the above determinations at the above-mentioned hearing.

INITIAL STATEMENT OF REASONS AND INFORMATION

The Board has prepared an initial statement of the reasons for the proposed action and has available all the information upon which the proposal is based.

TEXT OF PROPOSAL

Copies of the exact language of the proposed regulations, and any document incorporated by reference, and of the initial statement of reasons, and all of the

information upon which the proposal is based, may be obtained at the hearing or prior to the hearing upon request from the Board at 2535 Capitol Oaks Drive, Suite 300, Sacramento, California 95833.

AVAILABILITY AND LOCATION OF THE FINAL STATEMENT OF REASONS AND RULEMAKING FILE

All the information upon which the proposed regulations are based is contained in the rulemaking file which is available for public inspection by contacting the person named below.

You may obtain a copy of the final statement of reasons once it has been prepared, by making a written request to the contact person named below or by accessing the website listed below.

CONTACT PERSON

Inquiries or comments concerning the proposed rulemaking action may be addressed to:

Name:	Jeff Alameida
Address:	2535 Capitol Oaks Drive, S-300 Sacramento, CA 95833
Telephone No.:	(916) 263-2269
Fax No.:	(916) 263-2246
E-Mail Address:	jeff.alameida@dca.ca.gov

The backup contact person is:

Name:	Larry Kereszt
Address:	2535 Capitol Oaks Drive, S-300 Sacramento, CA 95833
Telephone No.:	(916) 263-2240
Fax No.:	(916) 263-2246
E-Mail Address:	larry.kereszt@dca.ca.gov

Website Access: <http://www.bpelsg.ca.gov/> Materials regarding this proposal can be found at <http://www.bpelsg.ca.gov/licensees/laws.shtml>.